IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

MONDAY, THE 8TH OCTOBER 2007 / 16TH ASWINA 1929

CRP.No. 885 of 2007

AGAINST THE ORDER DATED 26/06/2007 IN EP.69/02 IN OS.1229/1997 of PRL.MUNSIFF COURT, KOLLAM

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REVN. PETITIONER: HOLDER/DEFENDANTS

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1. VIMALA, MALIKA VEEDU,
BEACH NORTH WARD, KOLLAM.

2. ARAVINDKSHA KURUP
MALIKA VEEDU,BEACH NORTH WARD, KOLLAM.

3. RAJAMMA, (DIED)
MALIKA VEEDU,BEACH NORTH WARD, KOLLAM.

BY ADV. SRI.BECHU KURIAN THOMAS

RESPONDENTS: JUDGMENT DEBTOR,PLAINTIFF.

VIJAYA LEKSHMI AMMA,
KALLU PARAMBIL VEEDU,
CHENTHAPPOOR,MUKHATHALA,THRIKKOVIL VATTOM VILLAGE,
DECENT JUNCTION P.O.,KOLLAM.

BY

THIS CIVIL REVISION PETITION HAVING COME UP FOR ADMISSION ON 08/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

M.N.KRISHNAN, J

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C.R.P. No.885 OF 2007

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Dated this the 8th day of October 2007

ORDER

This revision petition is preferred against the order of the Prl.Munsiff's Court, Kollam in E.P.No.69/2002 in O.S.No.1229/1997. I am sorry to state at the opening itself that these disputes had arisen in a matter that had been compromised between the parties in a Lok Adalath. The very purport of the Lok Adalath and settlement of matters is to see that two persons, who come to the court go back from the court with open mind and friendship, but not the other way. Here, after getting an award passed by the Adalath now the parties have started relitigating in a different stage called execution petition. Learned counsel for the petitioners has taken me through the award especially clauses (5) and (7) of the award. Clauses (5) and (7)stipulate that all the trees standing in the landed property having 1.60 metres width set apart as a way will be cut and removed and in case any compound wall is to be put up by the plaintiff the width of the pathway having 1.60 metres will be undisturbed and such construction will not be obstructed by the defendants. Later, when the execution petition was moved, it was found that one anjali tree and one mango tree were standing

in the way and they had been cut and removed. The Commissioner, who had inspected the property had reported that the width of the pathway on the side of the coconut tree is 1.49 metres . A perusal of the order written by the learned Munsiff would reveal that a way is provided to access the property and what is intended is only a foot track and not a motorable access and it is very clear from the order itself that on the northern side of the property of the decree holder is a road and therefore no motorable access is necessary through the plaint schedule pathway. So, what is intended and what is preserved by the document is to have an access to the property and excepting one place where a 40 year old coconut trees stands, the width of the pathway is 1.60 metres. When a person losses 11 cms. of land, that too a restricted right of the user of the pathway is it necessary to cut and remove a good fruit bearing coconut tree aged 40 years also has to be considered. On reading the entire order and the facts and circumstances of the case, I feel that there must be magnanimity exhibited by the person who had obtained this way and he should not insist for removal of that coconut tree also.

I do not want to interfere with the order passed by the learned Munsiff. But, at the same time, I also like to point out a person who is bound to give the way should leave the way open and he should not

unncessarily attempt to interfere with that passage and should not cause any obstruction. If he wants to construct any wall on the basis of this coconut tree, he should not try to put up the wall whereby reducing the total width of the pathway from 1.60 metres to something less. If he wants to have the coconut tree he has to bend it at that point and maintain the width as suggested by the court. If there is any difficulty, the parties can approach the court and the whole work can be done under the supervision of a Commissioner as well. I also hope and feel that the person bound by the decree does not cause any obstruction for the smooth usage of the passage by the person who had obtained it under the decree.

C.R.P. is disposed of as above.

M.N.KRISHNAN, JUDGE

Cdp/-